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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

MAILED

Application Number: 10/040,379
Filing Date: January 09, 2002
Appellant(s): KONDO ET AL.

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Technology Center 2100

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REGISTRATION No.: 43,636
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 09/17/2007 appealing from the Office action mailed 01/25/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

WITHDRAWN REJECTIONS

The rejections under 35 U.S.C. § 112 first and second paragraphs are not presented for

review on appeal because they have been withdrawn by the examiner in view of the

amendment filed on 04/12/2007.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,813,395 B1   **KINJO**   **11- 02- 2004**

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by
another filed in the United States before the invention by the applicant for patent or (2) a patent
granted on an application for patent by another filed in the United States before the invention by the
applicant for patent, except that an international application filed under the treaty defined in section
351(a) shall have the effects for purposes of this subsection of an application filed in the United States
only if the international application designated the United States and was published under Article 21(2)
of such treaty in the English language.

Claims 23, 24, 27 and 28 are rejected under 35 U.S.C. 102(e) as being anticipated

by Kinjo [USP 6,813,395 B1].

Regarding claims 23, 27 and 28, Kinjo teaches a method, program and apparatus for retrieving image data (Abstract) comprising:

a database for registering a plurality of images in a database (Col. 10 Lines 34-39);

a display unit for displaying an image registered in the database on a display unit (FIG. 1, Col. 36-37);

a designator for designating an image area of the registered image displayed on display unit (In an attempt at searching for the original image of FIG. 1, the user has arranged a triangle symbolizing the mountain, two ellipses symbolizing the face and the trunk, respectively, of the person, and a vertically rectangle symbolizing the building, with each figure being fitted in the position where it is most likely to be found (Col. 10 Lines 60-67). The Kinjo technique indicates *an image area*, e.g., the face area, *of the registered image displayed on the display unit*, e.g., FIGS. 1 and 3, is *designated* by *a designator*, e.g., the mouse is used to specify an ellipse representing the face area); and

a controller for cutting out image data corresponding to the designated image area of the registered image (FIG. 3 shows the result of extracting predetermined geometric figures, e.g., triangular 31, circles 32 and 33, rectangle 34, from the image in FIG. 1 by the program for the image searching (Col. 10 Lines 45-51). The designated searching pattern is transformed to numerical data and tabulated in the same manner as shown in the following Table 1 (Col. 13 Lines 26-49). The Kinjo teaching as discussed indicates the *image data*, e.g., the image region represented by the circle comprising coordinates, size and direction, is extracted or *cut out* by *a controller*, e.g., the program for the image searching. The *image data*, e.g., the image region represented by the circle comprising coordinates, size and direction, *corresponding to the designated image area of the*

registered image, e.g., the image region represented by the circle corresponds to the specified ellipse of FIG. 3 representing the face area of FIG. 1) and

retrieving a desired image data containing image data which is identical or analogous to the image data cut out from the database (FIG. 5 illustrates the process of searching images. The designated searching pattern is transformed to numerical data and tabulated in the same manner as shown in the following Table 1 (Col. 13 Lines 26-49). After transforming the captured designated searching pattern to numerical data, image is read from the database and compared for verification with the designated searching pattern (FIG. 5, Boxes 501-504, Col. 13 Lines 45-54). The comparison is based on a degree of agreement between the captured designated searching patterns and the patterns in the read image using characteristic values (Col. 14 Line 46-Col. 15 Line 20). If the answer is yes based on a check for agreement, the characteristic values are retrieved (FIG. 5, Boxes 504-508, Col. 13 Lines 55-65), and the result of searched images is displayed in a thumbnail layout in the increasing or decreasing order of agreement (Col. 15 Lines 32-34). The Kinjo teaching as discussed indicates the program for the image searching is for *retrieving a desired image data from the database*, e.g., the result of searched images in thumbnail layout, *containing image data*, e.g., the specific figures as in Table 1, *which is identical or analogous to the image data cut out*, e.g., the similarity of the figures in the read image and the captured designated searching figures is based on a degree of agreement).

Regarding claim 24, Kinjo teaches all of the claimed subject matter as discussed above with respect to claim 23, Kinjo further discloses *the image corresponding to the image area is an image of a face of a person* (As shown in the Kinjo FIG. 3, *the image corresponding to the image area*, e.g., the face area specified by the ellipse, *is an image of a face of a person*).

(10) Response to Argument

RESPONSE TO ARGUMENTS WITH RESPECT TO THE REJECTION OF CLAIM 23

•   As argued by appellants at Page 6 Lines 3-6 and 17-24:

> Claim 23 recites "a controller for cutting out image data corresponding to the designated image area of the registered image and retrieving a desired image data containing image data which is identical or analogous to the image data cut out from the database." Appellants submit that Kinjo fails to teach or suggest this feature.

> ...

> Kinjo does not teach or suggest that cutting out image data corresponding to the designated image area of the registered image and retrieving a desired image data containing image data which is identical or analogous to the image data cut out from the database. In other words, Kinjo does not cut out image data of a stored image and retrieve and image which is identical or analogous to the image data cut out. Rather, Kinjo extracts figures which have a shape which matches elements of an image, but does not actually cut out image data which corresponds to a designated area of an image. The shapes used as the key to searching the images in the database, but these shapes are not actual registered image data.

The examiner respectfully disagrees.

As disclosed by Kinjo, an original image 10 stored in a database is displayed as in FIG. 1 (Col. 10 Lines 36-39). A user could designate searching patterns with a designating device, e.g., a mouse (Col. 10 Lines 39-45). In an attempt at searching for the original image of FIG. 1, the user has arranged a triangle symbolizing the mountain, two ellipses symbolizing the face and the trunk, respectively, of the person, and a vertically rectangle symbolizing the building, with each figure being fitted in the position where it is most likely to be found (Col. 10 Lines 60-67). FIG. 3 shows the result of extracting predetermined geometric figures, e.g., triangular 31, circles 32 and 33, rectangle 34, from the image in FIG. 1 by the program for the image searching (Col. 10 Lines 45-51). FIG. 5 illustrates the process of searching images. The

designated searching pattern is transformed to numerical data and tabulated in the same

manner as shown in the following Table 1 (Col. 13 Lines 26-49):

TABLE 1

No i	Ellipse (A)			Triangle (B)		Rectangle (C)		
	coordinates of the center	size	direction of major axis	coordinates of the center	coordinate of the three points	coordinates of the center	width on X-axis	Width on Y-axis
1	(a11, a21)	a31	a41	(b11, b21)	(b31~b81)	(c11, c21)	c31	c41
2	(a12, a22)	a32	a42	—	—	(c12, C22)	c22	c42
3	(a13, a23)	a33	a43	—	—	—	—	—
4	—	—	—	—	—	—	—	—

Table 1 above contains various characteristic values such as the center positions, sizes

and directions of the specific figures.

As shown in FIG. 5 of Kinjo reference, after transforming the captured designated

searching pattern to numerical data, image is read from the database and compared for

verification with the designated searching pattern (FIG. 5, Boxes 501-504, Col. 13 Lines 45-54).

The comparison is based on a degree of agreement between the captured designated

searching patterns and the patterns in the read image using characteristic values (Col. 14 Line

46-Col. 15 Line 20). If the answer is yes based on a check for agreement, the characteristic

values are retrieved (FIG. 5, Boxes 504-508, Col. 13 Lines 55-65), and the result of searched

images is displayed in a thumbnail layout in the increasing or decreasing order of agreement

(Col. 15 Lines 32-34).

The examiner respectfully disagrees with the appellant's arguments because:

1.   The term "*cutting out*" as recited in claim 23 is considered as extracting out. The recited "*image data*", which is cut out, is considered as <u>an image region</u> corresponding to the designated image area[1].

Based on the interpretation above, the Kinjo reference discloses that *an image area*, e.g., the face area, *of the registered image displayed on the display unit*, e.g., FIG. 1, is *designated* by *a designator*, e.g., the mouse is used to specify an ellipse representing the face area. The *image data*, e.g., the image region represented by the circle comprising coordinates, size and direction, is extracted or *cut out* by *a controller*, e.g., the program for the image searching. The *image data*, e.g., the image region represented by the circle comprising coordinates, size and direction, *corresponding to the designated image area of the registered image*, e.g., the image region represented by the circle corresponds to the specified ellipse of FIG. 3 representing the face area of FIG. 1. The program for the image searching is for *retrieving a desired image data from the database*, e.g., the result of searched images in thumbnail layout, *containing image data*, e.g., the specific figures as in Table 1, *which is identical or analogous to the image data cut out*, e.g., the similarity of the figures in the read image and the captured designated searching figures is based on a degree of agreement.

2.   The term "*cutting out*" as recited in claim 23 is interpreted as determining[2]. The recited "*image data*", which is cut out, is interpreted as image information corresponding to the designated image area.

Based on the interpretation above, the Kinjo reference discloses that *an image area*, e.g., the face area, *of the registered image displayed on the display unit*, e.g., FIG. 1, is *designated* by *a designator*, e.g., the mouse is used to specify an ellipse represented the face area. The *image data*, e.g., center positions, sizes and directions, is determined or *cut out* by *a controller*, e.g., the

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[1] *As illustrated in paragraph 0066 of the Specification: at step S701 a face region is cut out from an image stored in image*

program for the image searching. The *image data*, e.g., center position, sizes and direction,

corresponding to the designated image area of the registered image, e.g., the specified ellipse represented

the face area of FIG. 1. The program for the image searching is for *retrieving a desired image data*

from the database, e.g., the result of searched images in thumbnail layout, *containing image data*,

e.g., center positions, sizes and directions as in Table 1, *which is identical or analogous to the image*

data cut out, e.g., the similarity of the characteristic values in the read image and the captured

designated searching figures is based on a degree of agreement.

3.   In response to appellant's argument that *the shapes used as the key to searching... but*

these shapes are not actual registered image data. It is noted that the features upon which appellant

relies (i.e., *actual registered image data*) are not recited in the rejected claim(s). Although the claims

are interpreted in light of the specification, limitations from the specification are not read into the

claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

•   As argued by appellant at Page 7 Lines 4-10:

> In response, appellants submitted that claim 23 defines that the registered image refers to
> the image displayed on the display unit. Appellants submitted that the image displayed on the
> display in Kinjo is the original image data, and thus, the shapes disclosed in Kinjo can not possibly
> correspond to the registered image data. Appellants also submitted that Kinjo's "original image
> data" (see Fig. 4) corresponds to the claimed image data corresponding to the registered image. The
> shapes referred to in Table 1 do not correspond to image data of the registered image *which is*
> *displayed on the display unit.*

The examiner respectfully disagrees.

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database 101.
[2] *Cut out: To determine of assign through necessity (Merriam-Webster's Collegiate Dictionary Tenth Edition).*

In response to appellant's argument that *the shapes disclosed in Kinjo can not possibly correspond to the registered image data*, and *the shapes... do not correspond to image data of the registered image*. It is noted that the features upon which appellant relies (i.e., *the registered image data* and *image data of the registered image*) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to appellant's argument with respect to the Kinjo's "original image data" (FIG. 4) and the shapes referred to in Table 1, the examiner respectfully points out that the extracted shape from the image in FIG. 1, e.g., circle 32, as disclosed by Kinjo at Col. 10 Lines 45-51 as *image data*. The extracted shape *corresponding to the designated image area of the registered image*, e.g., the circle corresponds to the specified ellipse in FIG. 3 represented the face area of FIG. 1.

- As argued by appellant at Page 7 Lines 11-20:

    The key difference between the claimed invention and Kinjo's method is that Kinjo uses shapes that correspond to the original image data as the key for searching the images and the claimed invention uses actual image data cut out of the original image for searching the database. The Examiner continues to assert that the triangles, circles, rectangles, etc. are image data that is cut out but appellant maintains that these are merely shapes which match the image data, but no actual image data is being cut out. In other words, a triangle may correspond to a mountain, but it is not the mountain which is being used as the key for searching the database in Kinjo's method (which is essentially what appellant has claimed), it is the shape of a triangle and the corresponding information which helps to form that triangle (see coordinates in Table 1 in col. 13 of Kinjo) which is being used as the key for searching the database.

The examiner respectfully disagrees.

In response to appellant's argument that *the claimed invention uses actual image data*, and *no actual image data is being cut out*. It is noted that the features upon which appellant relies (i.e., *actual image data*) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to appellant's arguments that the mountain as in the Kinjo FIG. 1 is not being used as the key for searching. The examiner respectfully points out that the recited *image data*, which is cut out for searching, is considered as image region. The image regions are represented by shapes or image information as discussed above with respect to the responses to arguments at Page 6 Lines 3-6 and 17-24.

RESPONSE TO ARGUMENTS WITH RESPECT TO THE REJECTION OF CLAIM 24

As argued by appellant at Page 7 Lines 22-25 and Page 8 Lines 1-2

> Claim 24 recites that "the image corresponding to the image area is an image of a face of a person." Kinjo fails to teach or suggest this feature. At best, Kinjo would extract a circle which corresponded to the face of a person, but Kinjo fails to teach or suggest cutting out the image of a face of a person from the image data. The actual face is cut out according to claim 24, not a shape which is similar to the shape of a face. For at least this reason, Kinjo fails to teach or suggest the features of claim 24.

The examiner respectfully disagrees.

As shown in the Kinjo FIG. 3, *the image corresponding to the image area*, e.g., the face area specified by the ellipse, *is an image of a face of a person.*

In response to appellant's arguments that *Kinjo fails to each or suggest cutting out the image of a face of a person... The actual face is cut out... not a shape...* It is noted that the features upon which appellant relies (i.e., *the image of a face of a person* and *actual face is cut out*) are not recited in the

rejected claim(s). Although the claims are interpreted in light of the specification, limitations from

the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26

USPQ2d 1057 (Fed. Cir. 1993).

RESPONSE TO ARGUMENTS WITH RESPECT TO THE REJECTION OF CLAIMS 27

AND 28

Claims 27 and 28 are method and computer readable medium claims, which recite

substantially the same features recited in claim 23. The claims are unpatentable for the same

reasons as discussed above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related

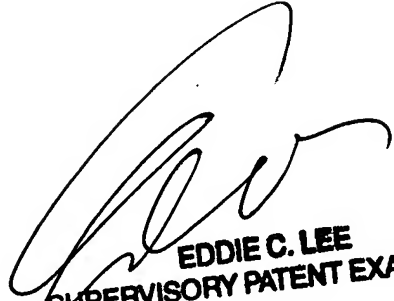Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Le. Pham

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